TITLE: An Action Relating To Resources And Development, Budget And Finance, And Naabik’íyáti’ Committees, And Navajo Nation Council; Approving A Supplemental Appropriation From The Unreserved, Undesignated Fund Balance In The Total Amount Of Thirty-Four Million One Hundred Ninety-Three Thousand Five Hundred Fourteen Dollars ($34,193,514) To The Navajo Nation Gaming Enterprise, Navajo Tribal Utility Authority, Navajo Nation Shopping Centers, Inc., Navajo Engineering And Construction Authority, Navajo Nation Hospitality Enterprise, And Navajo Arts And Crafts Enterprise; Waiving 12 N.N.C. §§ 820 (E), (F), And (J) Of The Appropriations Act

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DATE: January 29, 2021

TITLE OF RESOLUTION: AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL; APPROVING A SUPPLEMENTAL APPROPRIATION FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE TOTAL AMOUNT OF THIRTY-FOUR MILLION ONE HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED FOURTEEN DOLLARS ($34,193,514) TO THE NAVAJO NATION GAMING ENTERPRISE, NAVAJO TRIBAL UTILITY AUTHORITY, NAVAJO NATION SHOPPING CENTERS, INC., NAVAJO ENGINEERING AND CONSTRUCTION AUTHORITY, NAVAJO NATION HOSPITALITY ENTERPRISE, AND NAVAJO ARTS AND CRAFTS ENTERPRISE; WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J) OF THE APPROPRIATIONS ACT

PURPOSE: The purpose of this resolution is to appropriate $34,193,514 from the UUFN to give to the six Navajo Nation Enterprises named above.
PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL – Third Year, 2021

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0016-21

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE,
AND NAA'BIK'ÍYÁTI' COMMITTEES, AND NAVAJO NATION COUNCIL;
APPROVING A SUPPLEMENTAL APPROPRIATION FROM THE
UNRESERVED, UNDESIGNATED FUND BALANCE IN THE TOTAL AMOUNT
OF THIRTY-FOUR MILLION ONE HUNDRED NINETY-THREE THOUSAND
FIVE HUNDRED FOURTEEN DOLLARS ($34,193,514) TO THE NAVAJO
NATION GAMING ENTERPRISE, NAVAJO TRIBAL UTILITY AUTHORITY,
NAVAJO NATION SHOPPING CENTERS, INC., NAVAJO ENGINEERING AND
CONSTRUCTION AUTHORITY, NAVAJO NATION HOSPITALITY
ENTERPRISE, AND NAVAJO ARTS AND CRAFTS ENTERPRISE; WAIVING 12
N.N.C. §§ 820 (E), (F), AND (J) OF THE APPROPRIATIONS ACT

BE IT ENACTED:

SECTION ONE. AUTHORITY
A. The Navajo Nation established the Resources and Development Committee (RDC) as a
Navajo Nation Council standing committee and as such gave RDC oversight over
Navajo Nation Enterprises. 2 N.N.C. §§ 164(A)(9), 500(A), and 501(B)(4)(e).
B. The Navajo Nation established the Budget and Finance Committee (BFC) as a Navajo
Nation Council standing committee and as such empowered BFC to review and recommend to the Navajo Nation Council the management of all funds. 2 N.N.C. §§ 164(A)(9), 300(A), and 301(B)(2).

C. The Navajo Nation Council established the Naabik’íyáti’ Committee as a Navajo Nation standing committee and as such proposed legislation that requires final action by the Navajo Nation Council shall be assigned to the Naabik’íyáti’ Committee. 2 N.N.C. §§ 164(A)(9) and 700(A).

D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).

SECTION TWO. TITLE 12 FINANCE ACT SUPPLEMENTAL APPROPRIATION REQUIREMENTS

A. The Navajo Nation Council has the authority to approve supplemental appropriations. 12 N.N.C. § 820(L). Pursuant to 12 N.N.C. § 820(L), “[t]he Navajo Nation Council may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J).”

B. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget for budget impact analysis. 12 N.N.C. § 820(M).

C. When the Controller identifies additional sources of revenues above and beyond the initial or current revenue projections, supplemental appropriations may be approved by the Navajo Nation Council. 12 N.N.C. § 820(L).

D. Supplemental Appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for the designation of recurring and non-recurring revenues. 12 N.N.C. § 820(L).
E. The Nation shall budget all recurring operating expenses, including capital maintenance, from recurring revenues. Long term debt shall not be used to finance recurring operating expenses. 12 N.N.C. §820(E).

F. The Navajo Nation Code provides, “[t]he Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-five year) forecast shows that the operating deficit will not continue. Otherwise, non-recurring revenues will be added to the Unreserved, Undesignated Fund Balance. This provision may be amended or waived by a two-thirds vote of the full Navajo Nation Council.” 12 N.N.C. § 820(F).

SECTION THREE. FINDINGS

A. The novel coronavirus (or “COVID-19”), is a highly contagious and potentially fatal respiratory virus, that has severely impacted the Navajo Nation’s and the Navajo Nation Enterprises’ ability to generate revenue for the Navajo Nation and to maintain employment for Navajo People.


D. Navajo Nation Enterprises have worked with Navajo leaders to reduce the spread of COVID-19 by closing their operations or restricting their operations to essential employees. As a result of closures caused by the COVID-19 pandemic, the Navajo
Nation Enterprises are struggling to meet financial business obligations and keep employees in the work force.

E. The Navajo Nation Gaming Enterprise has implemented a layoff twice within approximately a 10-month period of nearly 1,000 members of the Navajo Nation currently on layoff status until further notice, or until immediate relief funding can be received by the NNGE.

F. COVID-19 has had a devastating economic impact upon Navajo Nation Enterprises over the past year. If the Enterprises do not receive COVID-19 relief funding, the Nation will risk the health, safety, and well-being of many Navajo People vulnerable to job loss and loss of health insurance, including the many dependent children, elders and other relatives who are also covered by the Enterprises’ health benefits.

G. The Navajo Nation Enterprises listed below have submitted requests for supplemental funding from the Unreserved, Undesignated Fund Balance, along with budget forms, supplemental funding proposal summaries, and grant applications, for a total of $34,193,514:

1. Navajo Nation Gaming Enterprise has requested funding of $15,000,000 as indicated in Exhibit A;

2. Navajo Tribal Utility Authority has requested funding of $7,830,191 as indicated in Exhibit B;

3. Navajo Nation Shopping Centers, Inc. has requested funding of $903,541 as indicated in Exhibit C;

4. Navajo Engineering and Construction Authority has requested funding of $6,996,576 as indicated in Exhibit D;

5. Navajo Nation Hospitality Enterprise has requested funding of $1,463,206, as indicated in Exhibit E; and

6. Navajo Arts and Crafts Enterprise has requested funding of $2,000,000, as indicated in Exhibit F.

H. Support for the Navajo Nation Enterprises is a priority in order for the Navajo Nation to remain competitive within their respective industries and to help recover from the devastating impacts of the COVID-19 pandemic.
I. The Controller has updated the balance of the UUFB and indicated that as of January 21, 2021, the amount of $63,795,352 is available for supplemental appropriations in Fiscal Year 2021.

J. In its approval of the Navajo Nation Budget Instruction Manual (“BIM”) for Fiscal Year 2021, the Budget and Finance Committee recognized the difficulties involved in obtaining signatures on budget forms related to requests for appropriation. The Fiscal Year 2021 BIM, therefore, reflects that divisions and departments are encouraged, rather than required, to have written concurrence from the appropriate Branch Chief or Division Director. Navajo Nation BIM, Fiscal Year 2021, Section XII.B.1.a.i.

K. The Office of Management and Budget has provided a memorandum to satisfy the requirements in 12 N.N.C. § 820 (M). Exhibit G.

L. The Office of the Controller has been requested to provide a memorandum to satisfy the requirements in 12 N.N.C. § 820 (L). The memorandum was not ready at the time of drafting this resolution, but will be included as an exhibit when it is available.

SECTION FOUR. WAIVING 12 N.N.C. §§ 820 (E), (F), AND (J), TO THE EXTENT THESE PROVISIONS PREVENT THE UNRESERVED, UNDESIGNATED FUND BALANCE TO BE USED TO FUND RECURRING EXPENDITURES

The Navajo Nation Council hereby waives 12 N.N.C. §§ 820(E), (F) and (J) to allow UUFB funds to be used for recurring expenditures.

SECTION FIVE. APPROVING SUPPLEMENTAL FUNDING FROM THE UNRESERVED, UNDESIGNATED FUND BALANCE IN THE AMOUNT OF THIRTY-FOUR MILLION ONE HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED FOURTEEN DOLLARS ($34,193,514) TO THE NAVAJO NATION ENTERPRISES

A. This supplemental appropriation of $34,193,514 shall be from that amount of funds that exceeds the minimum fund balance of the Unreserved, Undesignated Fund Balance as determined by the Office of the Controller, and as shown in Exhibit A-F.
B. The Navajo Nation hereby approves supplemental funding from the Unreserved, Undesignated Fund Balance in the amount of $34,193,514 for funds as indicated in the documents in Exhibit A-F.

SECTION SIX.  DIRECTIVE TO THE OFFICE OF THE CONTROLLER AND THE OFFICE OF MANAGEMENT AND BUDGET

In order to carry out the intent of the Navajo Nation Council in the approval of this legislation, expeditious implementation of this Resolution is of utmost importance. The Office of Management and Budget and the Office of the Controller are directed to take all steps necessary to give effect to this Resolution immediately after it becomes effective.

SECTION SEVEN.  DIRECTIVE TO ENTERPRISES

The Enterprises are directed to provide updated budget documents to the Office of Management and Budget, Office of Legislative Counsel, and to the Office of Legislative Services, consistent with the amendments made in this Resolution and the corrections noted by the Office of Management and Budget, for expeditious implementation of the amendments to this Resolution.

SECTION EIGHT.  EFFECTIVE DATE

The provisions of this Action shall become effective in accordance with 2 N.N.C. § 221(B).

SECTION NINE.  SAVING CLAUSE

Should any provision(s) of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.